

1 TUESDAY, JUNE 23, 2015 2:44 O'CLOCK P.M.

2 (Jury selection proceedings under separate cover.)

3 THE COURT: Okay. At this time we're going to have
4 the jurors sworn by the courtroom manager.

5 THE CLERK: Please stand and raise your right hand.
6 (Jury sworn.)

7 THE CLERK: Thank you. Please be seated.

8 THE COURT: Okay. I think we are going to pass out
9 the notebooks and pens.

10 Okay. So I am going to be giving you preliminary
11 jury instructions. This will take about 10 minutes.

12 Ladies and gentlemen, you now are the jury in this
13 case, and I want to take a few minutes to tell you something
14 about your duties as jurors and to give you some instruction.
15 At the end of the trial, I will give you more detailed
16 instructions. Those instructions will control your
17 deliberations.

18 This is a criminal case brought by the United States
19 government. The charge against the defendant is contained in
20 the indictment. The indictment is simply the description of
21 the charge made by the government against the defendant. It is
22 not evidence of anything.

23 The defendant has pled not guilty to the indictment
24 and is presumed innocent, unless and until proved guilty beyond
25 a reasonable doubt. It will be your duty to decide from the

1 evidence to be presented whether the defendant is guilty or not
2 guilty of the crimes charged. You will decide from the
3 evidence what the facts are, and your verdict will be based on
4 those facts.

5 You are the sole judges of the facts. You must then
6 apply those facts to the law that I shall give you, and in that
7 way reach your verdict.

8 You must follow the law whether you agree with it or
9 not. You should not take anything I may say or do during the
10 trial as indicating what I think of the evidence or what your
11 verdict should be.

12 The indictment in this case reads as follows:

13 Count 1. The grand jury charges from in or about
14 March 2002 and continuing to the date of this indictment, which
15 was March 25, 2015, in the District of Hawai'i and elsewhere,
16 defendant Albert S.N. Hee did corruptly endeavor to obstruct
17 and impede the due administration of the internal revenue laws
18 through the design and execution of a plan that included the
19 filing of corporate tax returns that falsely claimed the
20 payment of defendant's personal expenses as business expenses
21 and the filing of personal income tax returns that failed to
22 report as income the receipt of payments of personal expenses.

23 Count 2. On or about October 1, 2008, in the
24 District of Hawai'i, defendant Albert S.N. Hee, a resident of
25 Honolulu, Hawai'i, did willfully make and subscribe a Form 1040

1 U.S. Individual Income Tax Return for the calendar year 2007,
2 which was filed with the Internal Revenue Service and was false
3 as to a material matter and verified by a written declaration
4 that it was made under the penalties of perjury, which said
5 income tax return he did not believe to be true and correct as
6 to every material matter.

7 Counts 3 through 7 then have a charge of the same
8 nature with a different tax year. Count 3 goes to 2008, Count
9 4 to 2009, Count 5 to 2010, Count 6 to 2011, and Count 7 to
10 2012.

11 Since this is a criminal case, there are two basic
12 rules you must keep in mind. First, the defendant is presumed
13 innocent, unless and until proved guilty beyond a reasonable
14 doubt. The indictment is only an accusation. It does not
15 prove anything. The defendant, therefore, starts out with a
16 clean slate.

17 Second, to convict, the government must prove beyond
18 a reasonable doubt that the defendant is guilty. A defendant
19 has the right to remain silent and never has to prove innocence
20 or present any evidence. That the defendant may not testify is
21 not to be held against the defendant.

22 You will decide what the facts are from the evidence
23 that will be presented. That evidence will consist of the
24 testimony of witnesses, documents and other things received
25 into evidence as exhibits, and any facts on which the lawyers

1 agree or that I may instruct you to accept.

2 The following things are not evidence, and you must
3 not consider them as evidence in deciding the facts of this
4 case:

5 1. Statements and arguments by the attorneys.

6 2. Questions and objections by the attorneys.

7 3. Testimony that I instruct you to disregard.

8 4. Anything you may see or hear when the court is
9 not in session, even if what you see or hear is done or said by
10 one of the parties or by one of the witnesses.

11 There are two kind of evidence: Direct and
12 circumstantial. Direct evidence is testimony by a witness
13 about what that witness personally saw or heard or did.
14 Circumstantial evidence is indirect evidence; that is, it is
15 proof of one or more facts from which one can find another
16 fact. You may consider both direct and circumstantial evidence
17 in deciding this case. The law permits you to give equal
18 weight to both, but it is for you to decide how much weight to
19 give to any evidence.

20 Some evidence is admitted for a limited purpose only.
21 When I instruct you that an item of evidence has been admitted
22 for a limited purpose, you must consider it only for that
23 limited purpose and for no other.

24 There are rules of evidence that control what can be
25 received into evidence. When a lawyer asks a question or

1 offers an exhibit into evidence and a lawyer on the other side
2 thinks that it is not permitted by the rules of evidence, that
3 lawyer may object. If I overrule the question -- I'm sorry.
4 If I overrule the objection, the question may be answered or
5 the exhibit received. If I sustain the objection, the question
6 cannot be answered and the exhibit cannot be received.

7 Whenever I sustain an objection to a question, ignore
8 the question and do not guess what the answer would have been.

9 Sometimes I may order that evidence be stricken from
10 the record and that you disregard or ignore the evidence. That
11 means that when you are deciding the case, you must not
12 consider the evidence that I told you to disregard.

13 In deciding the facts of this case, you will have to
14 decide which witnesses to believe and which witnesses not to
15 believe. You may believe everything a witness says or only
16 part of it or none of it. In deciding what to believe, you may
17 consider a number of factors, including the following:

18 1. The witness' ability to see or hear or know the
19 things the witness testifies to.

20 2. The quality of the witness' memory.

21 3. The witness' manner while testifying.

22 4. Whether the witness has an interest in the
23 outcome of the case or any motive, bias, or prejudice.

24 5. Whether the witness is contradicted by anything
25 the witness said or wrote before trial or by other evidence;

1 and

2 6. How reasonable is the witness' testimony when
3 considered in the light of other evidence that you believe.

4 From time to time during the trial it may become
5 necessary for me to talk with the lawyers out of the hearing of
6 the jury, either by having a conference at the bench when the
7 jury is present in the courtroom or by calling a recess.
8 Please understand that while you are waiting we are working.
9 The purpose of these conferences is not to keep relevant
10 evidence from you, but to decide how certain evidence is to be
11 treated under the rules of evidence and to avoid confusion and
12 error. We will, of course, do what we can to keep the number
13 and length of these conferences to a minimum.

14 I may not always grant an attorney's request for a
15 conference. Do not consider my granting or denying a request
16 for a conference as any indication of my opinion of the case or
17 of what your verdict should be.

18 I will now say a few words about your conduct as
19 jurors. First, do not talk to each other about this case or
20 about anyone who has anything to do with it until the end of
21 the case when you go to the jury room to decide on your
22 verdict.

23 Second, do not talk with anyone else about this case
24 or about anyone who has anything to do with it until the trial
25 has ended and you have been discharged as jurors. "Anyone

1 else" includes members of your family and your friends. You
2 may tell them that you are a juror in a criminal case, but
3 don't tell them anything else about it until after you have
4 been discharged by me.

5 Third, do not let anyone talk to you about the case
6 or about anyone who has anything to do with it. If someone
7 should try to talk to you, please report it to me immediately.

8 Fourth, do not read any news stories or articles or
9 listen to any radio or television reports about the case or
10 about anyone who has anything to do with it.

11 Fifth, do not do any research or make any
12 investigation about the case on your own.

13 Sixth, do not make up your mind about what the
14 verdict should be until after you have gone to the jury room to
15 decide the case and you and the other jurors have discussed the
16 evidence. Keep an open mind until then.

17 As I have just instructed you, during the trial you
18 must not conduct any independent research about this case, the
19 matters in the case, or the individuals or entities involved in
20 the case. To be more specific, you should not consult
21 dictionaries or reference materials, search the internet,
22 websites, blogs, or use any other electronic tools to obtain
23 information about this case or to help you decide the case.
24 Please do not try to find out information from any source
25 outside the confines of this courtroom.

1 I repeat, that until you retire to deliberate, you
2 may not discuss this case with anyone, even the other jurors.

3 After you retire to deliberate, you may begin
4 discussing the case with the other jurors, but you cannot
5 discuss the case with anyone else until you have returned your
6 verdict and the case is at an end.

7 I hope that for all of you this case is interesting
8 and noteworthy. I know that many of you use cell phones,
9 BlackBerries, the internet, and other tools of technology. You
10 must not talk to anyone about this case or use these tools to
11 communicate electronically with anyone about the case. This
12 includes your family and friends. You may not communicate with
13 anyone about the case on your cell phone, through e-mail, text
14 messaging, on Twitter, through any blog or website or any
15 internet chat room or by any other social networking website,
16 including Facebook, or MySpace, LinkedIn, and YouTube.

17 At the end of the trial, you will have to make your
18 decision based on what you recall of the evidence. You will
19 not have a written transcript to consult, and it is difficult
20 and time-consuming for the reporter to read back lengthy
21 testimony. I urge you to pay close attention to the testimony
22 as it is given.

23 If you wish, you may take notes to help you remember
24 what witnesses said. If you do take notes, please keep them to
25 yourself until you and the other jurors go to the jury room to

1 decide the case. Do not let notetaking distract you so that
2 you do not hear other answers by witnesses. When you leave at
3 night, your notes should be left in the jury room. If you do
4 not take notes, you should rely on your own memory of what was
5 said and not be overly influenced by the notes of other jurors.

6 The trial will now begin. First, the government
7 attorney will make an opening statement, which is simply an
8 outline to help you understand what the government expects to
9 prove. Next, the defendant's attorney may but does not have to
10 make an opening statement. Opening statements are like a road
11 map. They are neither evidence nor argument. The government
12 will then present its evidence, and counsel for the defendant
13 may cross-examine. Following the government's case, the
14 defendant may present evidence, and the government's counsel
15 may cross-examine. After all the evidence has been presented,
16 the attorneys will make their closing arguments to summarize
17 and interpret the evidence for you, and I will instruct you on
18 the law. After that, you will retire to deliberate on your
19 verdict.

20 Mr. Tong, are you ready?

21 MR. TONG: We are, Your Honor. May we have one
22 moment with the Court at sidebar on an issue we both have?

23 (At sidebar on the record:)

24 THE COURT: Okay.

25 MR. TONG: Judge, we're ready to go, but I just

1 wanted to advise the Court that our opening statement is going
2 to be about half an hour, and Mr. Toscher says he will be close
3 to an hour. So I just want to tell the Court that that's how
4 long it's going to take because I doubt that you will want to
5 split the two openings.

6 THE COURT: I don't want to split.

7 MR. TONG: And we will be guided accordingly.

8 THE COURT: Well, I'll see if they can stay till
9 4:30. If they can, my preference is to go today.

10 MR. TOSCHER: Okay. That's fine, Your Honor.

11 There's one other item. We provided a graphic we
12 wanted to use in our opening to Mr. Tong.

13 MR. TONG: Not the abandoned water main one.

14 MR. TOSCHER: But the other one you're okay.

15 MR. TONG: Yeah, that's fine.

16 THE COURT: So there's an agreement on this.

17 MR. TONG: Yes.

18 THE COURT: Let me check with them.

19 MR. TOSCHER: Your Honor, before we start could we
20 take -- may we have a break?

21 THE COURT: Okay.

22 MR. TOSCHER: Thanks.

23 (In open court on the record:)

24 THE COURT: Can you all stay till about 4:30 today?

25 Is there anyone for whom that's a problem?

1 Okay. Then we're going to take a five-minute break,
2 and then we'll have opening statements.

3 (Jury excused.)

4 (Court recessed at 3:02 P.M., until 3:14 P.M.)

5 THE COURT: Okay. Mr. Tong, your opening
6 statement.

7 MR. TONG: Mr. Harrington will be giving the opening,
8 Your Honor.

9 THE COURT: Sorry. Mr. Harrington.

10 MR. HARRINGTON: Good afternoon. May it please the
11 Court. Ladies and gentlemen of the jury.

12 You've heard by now that this case is a tax case and
13 is about obstructing and interfering with the IRS and about
14 filing false tax returns. Well, what does that mean?

15 What this case is about is about defendant Albert Hee
16 using his business to pay for his personal expenses in the
17 amount of around \$2 million, and it's about defendant falsely
18 claiming that those expenses were for business purposes. And
19 by calling them business expenses, by putting those
20 representations on the records of the company, defendant's
21 companies took tax deductions, which lowered the amount of
22 taxes the companies would owe. And by calling them business
23 expenses, defendant didn't report those amounts on his personal
24 tax returns, and by not putting the value of those payments on
25 his tax returns, defendant avoided having to pay any taxes on

1 that amount and, in doing so, filed a false tax return for the
2 years at issue.

3 So how did this happen? Defendant owns a company
4 called Waimana Enterprises. You heard about that this morning.
5 Waimana Enterprises is a telecommunications company, and
6 defendant at the time was the sole shareholder of that company.
7 Waimana Enterprises itself owned other companies. Two
8 companies you may hear about are Sandwich Isles Communications
9 and ClearCom, Inc. But the company that's really at issue in
10 this case is Waimana, Waimana Enterprises, because that's a
11 company the defendant used to pay for his personal expenses.

12 Now, you're going to hear about how Waimana
13 Enterprises operated. You're going to hear from a longtime
14 office manager of Waimana Enterprises, Nancy Henderson. Nancy
15 Henderson's going to tell you how the company was run. It was
16 a fairly small operation. And what she's going to tell you is
17 that defendant was at the top of the chain. He was a hundred
18 percent shareholder. He was the owner. He was the president.
19 If there was a dispute, he would be the one who would provide
20 the final answer. And most importantly, what defendant said is
21 what the company did. If defendant asked for a check to be
22 issued, the company issued a check. If defendant said it was a
23 business expense, it was reported as a business expense.

24 So you've heard me talking about these expenses. So
25 what are we talking about here? Well, defendant like anyone

1 else, has personal and family expenses. What defendant did is
2 he had his company pay for those. For example, defendant
3 received regular massages from a woman named Diane Doll. And
4 you'll meet Diane Doll. She'll testify in this trial. And
5 what you'll hear is that defendant got massages twice a week
6 two hours at a time. But defendant didn't write a personal
7 check or pay cash out of his own pocket. Defendant ordered
8 that Waimana Enterprises pay for those massages, and defendant
9 had that written down in the records of the company as
10 "Consulting Fees." He called his personal massages
11 "consulting" expenses. We'll hear from Diane Doll that all she
12 did was provide massages. She didn't know anything about the
13 telecommunications business.

14 Defendant also had family expenses, and you're going
15 to hear about how defendant used his company to pay for those
16 expenses as well. Nancy Henderson is going to tell you about
17 how the credit card system worked at Waimana Enterprises.
18 Waimana Enterprises didn't actually have a credit card in its
19 name. It didn't have a credit card that said "Waimana
20 Enterprises." Instead, it used defendant's credit card. And
21 what would happen at the end of each month is defendant would
22 sit down with Miss Henderson, and he would identify what was a
23 business expense and what was a personal expense.

24 And you're going to see these exhibits. What you're
25 doing to see is what was categorized as business expenses:

1 family meals, flights for his family, airfare to the mainland.
2 Specifically, you're going to hear about family vacations that
3 were paid for by the business. You're going to hear that
4 defendant's wife and children visited Tahiti to see a hula
5 festival, sort of like the Merry Monarch Festival here. And
6 you'll hear from defendant's daughter that that was the purpose
7 of the visit. But defendant had his company pay for it, about
8 \$7,000 worth of expenses. And defendant said it was a business
9 expense. He even wrote on a piece of paper that you're going
10 to see with his signature on it, saying that the purpose of the
11 trip was to investigate an underwater cable.

12 You're going to hear about a family vacation to
13 Disney World that actually occurred the same month that the
14 family went to Tahiti. Defendant's children went to Disney
15 World. They stayed on property. They bought dining tickets.
16 They bought theme park tickets. And defendant had his company
17 pay for those expenses. And defendant again wrote a memorandum
18 on a piece of paper, saying that it was a business expense with
19 his signature.

20 You're going to hear about a vacation to Switzerland
21 and to France. The defendant's wife, one of defendant's
22 daughters, and the daughter's boyfriend took. \$20,000 worth of
23 expenses, everything from train tickets, opera tickets. You'll
24 see them all on the statement, all marked as business expenses.

25 See about a vacation to the Big Island where his

1 family stayed at a resort. \$16,000 of expenses for a family
2 vacation, written off as a stockholder meeting, when at the
3 time defendant was the only stockholder of the company.

4 So each time these expenses were made, the company
5 took a business deduction. For example, the Big Island trip:
6 took a \$16,000 business deduction; and defendant on his
7 personal tax return didn't put down the \$16,000 and didn't pay
8 any taxes on it.

9 Defendant also has three children that he provides
10 for. One thing that's not going to be in dispute in this case
11 is that those three children are very impressive, accomplished
12 individuals. All attended prestigious private schools on the
13 mainland. Defendant's eldest daughter is Adrienne Hee. And
14 she got into the Massachusetts Institute of Technology in
15 Boston, MIT, very prestigious school. And when she went there,
16 defendant didn't write a check to pay the tuition. The
17 defendant ordered that his company pay for her tuition, and he
18 had it listed as an educational expense. And again, the
19 company took a deduction, and he didn't report that amount on
20 his tax return.

21 Now, what you will hear is one of his accountants
22 actually noticed this, told him he couldn't do it. But
23 defendant kept having his company pay for the expenses.
24 Instead, he said it was a loan. What you'll see is there
25 wasn't any paperwork associated with the loan. You'll see like

1 when you take out a mortgage on your house, you sign what we
2 call a promissory note or a written agreement setting out the
3 terms of repayment, the interest rate, all of that sort of
4 stuff that you would see. There was not such paperwork. And
5 defendant continued to have his company pay for her tuition and
6 her living expenses.

7 Defendant's next daughter, Breanne Hee, she went to
8 Santa Clara University. And when she went to Santa Clara
9 University, again defendant had his company write the checks
10 and had his company pay for those expenses and said it was a
11 loan.

12 Now, at this time defendant had two children
13 attending private schools on the mainland, and presumably,
14 those children had their own expenses. And so in February when
15 defendant's children were full-time students on the mainland
16 attending college, defendant started having Waimana Enterprises
17 pay them a salary as if they were full-time employees at the
18 company. And that salary included a generous benefits package,
19 a retirement account, 401(k) distributions, everything else
20 you'd see as a full-time employee. But defendant's children
21 were attending school full time on the mainland.

22 Defendant has one other child: Charlton Hee, his
23 son. Charlton Hee followed his big sister to Santa Clara
24 University. And again, defendant had the company pay for his
25 tuition. And he put his son on the payroll as a full-time

1 employee, even though he was attending school full time in the
2 mainland. And what you'll see is that defendant called those a
3 loan, but defendant didn't make any payments on the loan. And
4 then the IRS started looking into it. And it wasn't until the
5 IRS started looking into it and opened a criminal investigation
6 that defendant then paid off the loan.

7 You're also going to hear that when defendant had two
8 children at Santa Clara University, he decided to buy a house
9 for them, a \$1.3 million house just a few blocks from Santa
10 Clara University. And defendant's children lived there
11 rent-free. And defendant had his company buy that house, and
12 he said it was a corporate retreat. But what the house really
13 was was college housing for his children. Again, they got to
14 live there rent-free.

15 Now, this is a tax case, and because it's a tax case,
16 and you probably already heard from some of the questions
17 during the jury selection process, you're going to hear from
18 some accountants in this case. Defendant had accountants that
19 worked at his business and that he also used to help him
20 prepare his tax returns. What you're going to hear from those
21 accountants is that accountants rely on truthful
22 representations from their clients. In fact, this is usually
23 part of a written agreement that you're going to see, and it
24 says that the client agrees to provide truthful information.
25 And so at the very beginning, what I was talking about,

1 defendant called these business expenses, and the accountants
2 saw them as business expenses and put them on the tax returns
3 as such because again the accountant relies on what their
4 client tells them.

5 Now, one thing you also want to focus on in this
6 case, when you're hearing from accountants and you're hearing
7 from all these witnesses, is I want you to focus on defendant's
8 acts because that's what's at issue in this case: what
9 defendant said; the paperwork he signed. You're going to see
10 his signature on practically every relevant document in this
11 case, on practically every check that was issued. I want you
12 to pay close attention to that.

13 Now, there's one other thing I want to talk about. I
14 hope that you're going to enjoy watching this case, and,
15 hopefully, you're going to learn something, but at times in
16 this case the testimony may be a little tedious. We're going
17 to see a lot of documents. They're going to be up on this
18 screen up here. We're going to be zooming in, pointing things
19 out, and at times it may feel a little slow and a little
20 tedious. But what we're going to assure you is that it's all
21 for the purpose of putting on our case, and we ask your
22 patience in listening. We ask your patience in listening to
23 the testimony and the consideration of the evidence.

24 And at the close of the case we're going to ask that
25 you find defendant guilty of obstructing and interfering with

1 the IRS by using his company to pay his personal expenses and
2 claiming they were business expenses and guilty of filing false
3 tax returns for not reporting the value of all those payments
4 that were made on his behalf. Thank you.

5 MR. TOSCHER: Good afternoon. I know it's late. I
6 will try to not keep you too long.

7 Mr. Kawafuchi, my associate, partner, grab the easel
8 over there for me. We're going to use that just for some
9 background.

10 Let me again formally thank you for being here. May
11 it please the Court. I think I may have already introduced my
12 client, Mr. Al Hee.

13 Mr. Hee, stand up.

14 We appreciate your service as a juror. You've been
15 here all day. But as the Judge said, our system of justice
16 depends upon it.

17 You've heard the government's statement. And as the
18 Court said, our statements are just what we believe the
19 evidence will show. You're going to get to hear the witnesses
20 and see the evidence. And now I'm going to tell you a little
21 bit about what our side of the story is. And when you listen
22 to it, I think it will explain why Mr. Hee is not guilty as
23 alleged by the government.

24 Now, I'm going to start by talking about why this
25 case really isn't about tax crimes. It's not about

1 obstruction. It's not about knowing falsities. It's about a
2 dispute, a good-faith dispute between Mr. Hee on one side and
3 his accountants and the IRS.

4 The -- as the Court will instruct you, and as the
5 Court, we're talking about willful violations. And the
6 government will not be able to prove willful violations in this
7 case. They may talk about certain types of expenses -- and
8 I'll deal in more detail with it later -- that this is not a
9 business expense, but as I will get into more detail later and
10 outline in the evidence, we will show you a business purpose
11 and why the defendant believed there was adequate business
12 justification for these expenses.

13 After we review the evidence, we'll talk about
14 Mr. Hee's background and his building -- the government is
15 right: Mr. Hee created, he's the visionary, and was the owner
16 of Waimana Enterprises, Sandwich Isles Communications, and
17 ClearCom. Those are the three main entities that we're dealing
18 with.

19 But before we get into that, and I think we heard
20 about it during jury voir dire today, again you'll hear about
21 the various issues the government says, and there is a
22 disagreement with the government as to whether they're right or
23 we're right. We think we're right on a lot of the issues.

24 Now, the evidence will show this case just didn't
25 start a year ago or two years ago. The examination of

1 Mr. Hee's businesses started in 2006. It's 2015 today. Nine
2 years it's been going on. And what you will see throughout
3 that long audit process, investigation: cooperation with the
4 government, no concealment.

5 You'll hear evidence that an examination period or
6 the charged period, you recall the Court, from 2002 to 2012,
7 you'll hear evidence that's very unusual. Some audits take a
8 year, some less, maybe two years. You determine what the
9 issues are, you resolve it, maybe go to the U.S. tax court to
10 vindicate your rights. But that never happened in this case
11 because the government felt, and I think the evidence will show
12 you they jumped to the gun, and they never proposed any
13 additional adjustments to Mr. Hee. Instead, they referred it
14 for a criminal investigation, saying and alleging what he did
15 was willful. And the evidence will show you that's not the
16 case.

17 Now, Mr. Hee is not a tax or accounting expert, and
18 like many heads of companies, he employed many accountants,
19 inside and out, to keep the books. And when an issue was
20 raised with him, he followed their advice. And that's what
21 you'll hear from the accountants.

22 I want to try to just give you a road map and not
23 argue, but I need to say this now. The government claims it
24 was -- the payments were falsely characterized as loans. These
25 were loans, and that's what the accountants -- that's how the

1 accountants told him to treat them.

2 I'm getting ahead of myself, though.

3 You're going to hear some evidence as to the duties
4 and responsibilities of an accountant. You're going to hear a
5 lot of evidence about how tax is complex. We all know it's not
6 black and white. It's difficult. It's difficult for
7 accountants. It's difficult for everybody. It's becoming more
8 complex. And it grows -- the Tax Code grows more complex every
9 day. You're going to hear independent evidence, not only from
10 Mr. Hee's accountants regarding these issues, but from outside
11 accountants as to how they would treat the various issues
12 involved.

13 You may feel maybe the IRS has the better argument on
14 some of the issues. But I submit to you the evidence will show
15 they were not intentional, there was no concealment, it was not
16 willful by Mr. Hee and not willful by his accountants as to
17 what was done. Even if Mr. Hee was wrong, if he made a
18 mistake, if he was negligent, he's not guilty of the tax
19 crimes, if he didn't intentionally do it, and he was not.

20 And that sort of gets to what this case is about:
21 whether the government will demonstrate -- and we submit they
22 will not -- that Mr. Hee knew and intentionally violated the
23 tax laws. They cannot because he did not.

24 Criminal tax cases are about money. Why do people
25 do, you know, false things? You will see this wasn't about

1 money. This was about a man who thought what he was doing was
2 right. And you're going to get to hear the evidence and
3 evaluate that. No concealment. No hiding of things.

4 Now, before I explain what this is -- I'm going to
5 move it back a little bit -- just a little bit about Mr. Hee.
6 He was born and raised in Hawai'i on O'ahu. His dad worked for
7 the Board of Water Supply, his mom for the Sheraton Hotels. He
8 learned early on -- and you'll see why this is so important --
9 loyalty to family, country, and the people of Hawai'i. He
10 learned that that could be accomplished through education and
11 hard work and ingenuity, and you didn't need to come from money
12 to be successful.

13 You may have heard the word and you will hear
14 evidence of Mr. Hee's *kuleana*. *Kuleana*, Hawaiian term, hope
15 I'm pronouncing it right. Forgive me if I pronounce the words
16 wrong. I'm working very hard to get all the words right. My
17 wife told me I must.

18 Obligation. And the *kuleana* here was Mr. Hee helping
19 the beneficiaries of the Hawaiian Home Lands, the native
20 Hawaiians, by building a high-speed telecommunications
21 state-of-the-art network. We all know how important high-speed
22 telecommunications, the internet, is today. Go back to 1990.
23 I don't think many people were thinking as in the future as
24 Mr. Hee was. And he was.

25 Now, if we think high-speed telecommunications is

1 important to us living in a city like Honolulu, what about
2 people in the remote areas? And there are a lot of remote
3 areas where homelanderers -- Hawaiian Homelanderers live.

4 Now, you'll hear testimony about the Hawaiian Home
5 Lands and that the core mission is returning native Hawaiians
6 to their land. Mr. Hee was trying to develop, and did develop,
7 a telecommunications network, which I'm going to talk about in
8 a little bit. I'm going to have to move this so I can get over
9 there.

10 Just a little bit about Mr. Hee. He was born in 1954
11 before statehood when the Aloha Tower was the tallest building
12 here. He witnessed the benefits of statehood with the
13 difficulties and the benefits on the local people who tried to
14 stay in Hawai'i. And that's important. Graduated from
15 Kamehameha, and he chose to attend the United States Naval
16 Academy in Annapolis in 1972. Remember what was going on in
17 1972? The end -- we didn't know it was the end, but the
18 Vietnam War. At the time the Naval Academy required you to
19 sign at the leisure of the president.

20 You'll hear evidence that Mr. Hee was released of his
21 obligation because of health issues he developed while at the
22 Naval Academy. But he didn't want to be released, and he asked
23 to stay with them, and he served another four years in the Navy
24 on the mainland.

25 Now, his health issues are relevant and will be

1 important because Mr. Hee was the executive officer of running
2 this very major enterprise, and he had health issues. And we
3 will be showing you evidence that massages are key therapeutic
4 treatment for stress and workplace stress, and there was a
5 business purpose for it.

6 You'll hear evidence of how the companies grew from
7 1990 to maybe five employees to over a hundred employees.

8 Now, let me just back this up one second. That way I
9 won't hurt anything. I'll stay close to the microphone, Your
10 Honor.

11 THE COURT: Okay. We can give you either a hand-held
12 mike --

13 MR. TOSCHER: If you have it now, that would be very
14 appreciated, Your Honor.

15 THE COURT: There's always the lavalier, too.

16 MR. TOSCHER: Sorry. Thank you.

17 Ladies and gentlemen, what we have here is a map of
18 the Hawaiian Islands. And we have the locations -- and we're
19 going to have more testimony of this, but I want to set the
20 context for you. You see the Big Island, Maui, Moloka'i,
21 Lana'i, O'ahu where we are, Kaua'i, some of the other smaller
22 islands.

23 Now, what we have, the Hawaiian Home Lands are spread
24 throughout the islands. Not only are they spread throughout
25 the islands, they're in very remote areas. When Mr. Hee was

1 first approached -- and you will hear evidence of it -- about
2 bringing communications, not necessarily high-speed
3 telecommunications, but just communications, there wasn't
4 communications in many of these places. There certainly wasn't
5 modern-day communications. The type of communications that was
6 available was either none or -- I've heard the words; you may
7 hear it -- party lines. Now, not everybody knows what a party
8 line is. It goes way back. It's where you pick up a phone,
9 and your neighbor down the street or down the road may be on
10 it. So it was very not sophisticated.

11 Mr. Hee felt that by engaging in that, taking on the
12 obligation, the Department of the Home Lands -- Department of
13 Hawaiian Home Lands, that he could bring high-speed
14 communications, potential of small businesses, telemedicine,
15 all these things we see today. And you'll see that he was
16 successful in doing it.

17 As I said before, if you live in a city like
18 Honolulu, or any city, you take it for granted. But when
19 you're out in a remote area, to be able to have high-speed
20 communications and communicate, that's an important thing.

21 Now, I've talked about before the companies, and I
22 think we have a good understanding of what the companies are.
23 You have Waimana Enterprises, which is the parent company,
24 which was owned by Mr. Hee; Sandwich Isles Corporation, which
25 is a regulated utility, bringing the high-speed communications;

1 and Clearcom Corporation. You may not hear a lot about that,
2 but it was one of the entities that ran -- was responsible for
3 some of the undersea cable.

4 And let me just point out now there were challenges
5 in not only connecting various remote homeland areas, but how
6 do you connect the various islands? And you'll see that was
7 done. The blue lines here reflect the underseas cable.

8 And it's important, and the reason we raise it -- you
9 might be asking why am I talking about this -- is that one of
10 the trips that was taken, a couple of the trips, related to the
11 underseas cables, the inspection of the plant -- or excuse me,
12 the inspection of the manufacturing plant in France you heard
13 that was manufacturing it. And a related issue: the Tahiti
14 trip. You'll hear from people knowledgeable about the
15 homelands and how this brought change to their lives.

16 Now, this was a really big task. Some people would
17 say impossible. Other types of, you know, for-profit
18 utilities, it's not profitable. We want to stay in O'ahu. But
19 Mr. Hee had a vision and a *kuleana*, and that's important as to
20 a lot of things he did here. And this tells you something
21 about him. He wants to do things, accomplish good things, but
22 he doesn't violate the law.

23 Now, we're going to get you out of here in time, but
24 I want to -- I want to go through the various issues because
25 the government -- I want to give our side of the story.

1 Now, one of the issues was Mr. Hee decided to employ
2 his wife and children at the company. And let me name his
3 children for you: Adrienne Ho'o Hee, Breanne Liko Hee, and
4 Charles Kupa'a Hee. You're going to hear all of them testify.
5 Mr. Hee knew you can't build a telecommunications company,
6 okay, that's going to be owned by Hawaiians, run by Hawaiians,
7 and service Hawaiians in his lifetime. It takes a long time.
8 And what he wanted was to train -- to induce his children to
9 become a part of the company. He wanted to start training
10 them. And you're going to hear testimony there were
11 discussions early on about the children being part of the
12 company. He wanted them, not to help them -- he did want to
13 help them; he's their father -- but as the future of the
14 company: to take over.

15 You're also going to hear evidence -- so it may not
16 be just a boring tax case -- about how children don't always
17 agree with their parents as to -- we know what Mr. Hee wanted
18 to accomplish, and I think you'll find, when you'll hear the
19 children -- they're not such children anymore, and they are
20 accomplished, as the government said -- that they all had
21 different ideas as to when they would have to come back. Okay.
22 One is already back, Liko, and you'll hear from her. The other
23 two, Kupa'a and Ho'o, they're not back yet.

24 Now, the evidence will show that Mr. Hee believed to
25 train his children to be executives to take over this company,

1 what's a good starting point? What's the best starting point?
2 We all know it. A solid college education. Working with
3 Sandwich Isles and the related companies, it's just not
4 telecommunications. It's construction. It's regulatory
5 issues. It's financing. It's everything. And he knew that
6 they needed to have a good educational base.

7 Now, he also understood the importance of bringing
8 his wife into the business. Wendy Roylo -- I'm sorry. Again,
9 I pronounced the name wrong -- Hee.

10 Now, Wendy is from a plantation town of Waialua. You
11 may be familiar with it. She also graduated from Kamehameha
12 and attended college at Wesleyan and Harvard. Expertise in
13 Hawaiian cultural matters and knew about the importance of
14 serving the Hawaiian Home Lands. What you'll see evidence is
15 Wendy became part of the public face of the businesses because
16 Mr. Hee, he doesn't want to be part of the public face. He
17 wants to stay in the background. You'll hear many of these
18 trips that were talked about, Mr. Hee didn't go on those trips.
19 Okay. They weren't family vacations. They were
20 business-related.

21 Now, he decided it made good sense to not only employ
22 Wendy and the children. You'll hear evidence Wendy started
23 when she was his partner not only in life, but in business when
24 this was starting out.

25 Now, the government says because Wendy didn't go into

1 the office every day, the kids -- the kids were in Santa Clara
2 or MIT. "Why were you paying them a full-time salary?" Okay.
3 There was good reason for it because it was part of what he
4 viewed as their training program. And what you'll hear the
5 evidence is that the salaries were recorded, they were reported
6 by the children on their tax return. The accountants knew that
7 they were paying these salaries when they were full-time
8 students. Nobody ever said a word. They thought it was okay.

9 Could they have scrutinized a little more how much
10 work they were doing? Yeah, maybe. But again, this is one of
11 those technical tax issues. Nobody was hiding anything. And
12 the accountants never told him you can't do this, you shouldn't
13 be doing this. And there was good reason for doing it.

14 That's what the case is about. There may be a
15 technical tax dispute, but if Mr. Hee was not willful, and the
16 evidence will show he was not, these are not crimes.

17 Now, I'm going to go through the rest of the issues
18 because the government opened them up in opening. And
19 massages. Okay. It's true Mr. Hee received massages
20 frequently over the years, legitimate massages for his stress
21 and medical conditions. The evidence will show many people in
22 the company knew he was going for his massage. You can't go
23 somewhere twice a week for two hours. This wasn't concealed.

24 Now, you're going to hear evidence from a third-party
25 expert of how important -- how good massage therapy can be to

1 relieve stress in the workplace. Okay. Businesses do it all
2 the time. Government entities do it all the time. And Mr. Hee
3 properly thought, "I'm the chief executive of the company.
4 Massage therapy is helping me. Why not have the company pay
5 for it?" Not an issue.

6 Now, you may -- there may be a technical tax dispute,
7 "Was it being offered to everybody?," this or that, yes. But
8 nobody ever told him.

9 Now, the government is claiming, asserted here today,
10 that these were falsely characterized as consulting expenses.
11 What Mr. Hee and his administrative assistant told the
12 accountants was it was "health consulting." Okay. And the
13 accountants just changed it when they put things in categories
14 to just straight "consulting." There's a big difference
15 between the two, and it's just sort of one of the errors that
16 the government -- you know, if the government looks at anybody
17 for 10 years with a microscope, they're going to find these
18 issues. But you're going to hear evidence as to what the
19 accountants were told was "health consulting" and further
20 evidence that they should have inquired further. What does
21 this relate to? But they did not, and you'll hear why they did
22 not, how it got changed around.

23 Now, I'm going to try to straighten out a few things
24 now just so you're not left with a misimpression, but again all
25 this is just the road map. You're going to hear the evidence.

1 Okay.

2 The government is right. In 2004 Mr. Hee thought he
3 would be able to deduct tuition for MIT for Ho'o. Put it in
4 the books, education expense, send it to the accountants. No
5 concealment. He thought it was part -- I could do it.
6 Businesses do pay for education expenses.

7 Now, there are technical rules. Okay. So the
8 accountants, when they do their review -- and these
9 accountants, you'll see, did review. The accountants David
10 Chinaka and Carlton Siu and their staff, they will tell you
11 they missed it. They didn't see it. And that's why they
12 deducted it. It was a mistake. And they'll tell you it was
13 their mistake. Nothing intentional. It was an error, but
14 nothing intentional by Mr. Hee or the accountants. They just
15 missed it.

16 But here's what happened. The following year they're
17 looking a little closer at the books, and they say tuition to
18 MIT, Santa, Clara. Nothing is hidden. And, finally, the
19 accountants say, "Whoa, wait a second." They notice it. What
20 is it? They talk to Mr. Hee. They conclude, No, you can't
21 deduct the tuition. And they said the way you should treat it,
22 treat it as a shareholder loan because that's the way
23 accountants routinely treat, when a company is paying personal
24 expenses for a business, an owner, treat it as a shareholder
25 loan. It's the way they do it. While it did start out as a

1 deduction, it changed to a shareholder loan based upon what the
2 accountants thought was right, and that's what Mr. Hee did.
3 Nothing concealed.

4 Now, the government says, well, there's no promissory
5 note. Well, if you look at the books and records of the
6 company, it was a loan. There was no note. Do you need a note
7 when you loan money to a friend? Do you document everything in
8 life? You don't need -- the question is what in substance was
9 it, and it was a loan, not just being called a loan. It was a
10 loan and done based upon the advice of the accountants.

11 Now, what you'll find is, yes, sometimes the IRS
12 comes in and challenges it, says, "Well, we want to tax that.
13 We don't think it's a loan." But what you'll see is these
14 accountants, day in and day out, treated it as a loan, and
15 that's what people do.

16 And the government is right it was paid back later,
17 but I would just suggest when the government looks at an
18 examination or investigation period that goes from 2002 and
19 goes on to 2015, certain actions are going to happen after the
20 investigation starts. So you'll get to evaluate whether it was
21 a loan. We think it clearly was. The accountants told him to
22 treat it as a loan, and the experts will say that's what's
23 done.

24 The Santa Clara house. Yeah, there's a lot of issues
25 here. We're going to talk about all of them.

1 Yes, they purchased a house in Santa Clara. Waimana
2 purchased the house. Mr. Hee didn't purchase the house;
3 Waimana purchased the house. One child, Breanne, was already
4 in school in Santa Clara, and Kupa'a was going to be going to
5 school there. But what the government didn't mention is
6 Waimana had a very big investment in a company called Siometrix
7 in the Santa Clara area, which was developing a more modern,
8 more sophisticated, more sensitive, and more portable, anthrax
9 detection device. And you'll see -- the accountants will
10 present the schedules -- I think Waimana had an investment by
11 about \$5 million at the time, maybe three to five. I don't
12 recall right now.

13 Now, Mr. Hee thought, "We're going to be up there
14 watching our investment. We're going to be going to the lab."
15 You're going to hear evidence about Mr. Hee going to the lab,
16 about Liko, the middle daughter, going to the lab, and thought,
17 you know, the kids could live there, take care of the property.
18 Not a big deal.

19 The technology ended up not being as promising, and
20 the lab work all moved back to Honolulu later on. And you'll
21 hear evidence about how the research continues, the progress,
22 and, hopefully, that will be a successful investment.

23 Now, you're going to hear testimony that the
24 government's going to claim it wasn't used enough for
25 investment, Santa Clara, and the kids lived there, and Liko

1 later rented some of the rooms. And she was told, "You're
2 managing. You're taking care of it. Learn how to manage
3 property." And Liko probably did not do all -- send all the
4 information to the accounting department to do that properly.
5 Okay? It happens. It's a -- the government is going to assert
6 that Mr. Hee should pay the fair rental value as income for
7 their kids' use of the property, and that's not the case. And
8 even if there is some technical issue, how would he know that?

9 Now, just a couple more. The government -- and I'm
10 basing this on what their allegations -- over a five or
11 six-year period Mr. Hee took cash withdrawals when he would
12 travel, and the government is saying that's not a legitimate
13 business expense. 28,000 over a five-year period. It's about
14 \$5,000 a year. But what you'll see is evidence that each of
15 these withdrawals is tied into one of his many business trips
16 that he was doing.

17 Now, finally, the government is asserting -- not
18 finally, a more -- another one -- asserting that over I think
19 it's a 10-year period, that the government has selected, after
20 scrutinizing, you're going to see millions of transactions,
21 millions of dollars, a hundred twenty thousand -- 121,000 in
22 personal expenses. And what you'll see, that in large part,
23 those which they have picked out were business-related. Okay.
24 There was a business purpose. There may be some technical
25 rules, that did you keep all the paperwork to do it, but they

1 were business-related.

2 You heard about the Tahiti trip. Yeah, I can see an
3 IRS agent say, "Hey, whoa, what about this?" Okay. But they
4 didn't complete the audit to really get into the facts of it.
5 What you'll hear is evidence is that Sandwich Isles and Waimana
6 were thinking of doing business with a Tahitian cable company
7 called Hanatoa. And Mr. Hee thought it would be okay to send
8 his kids and Wendy to kick the tires, check out. Okay. Not a
9 formal thing, but go look, see what's going on.

10 Now, I don't doubt for a second that one of the
11 daughters, Ho'o, it's a vacation. But the important point is
12 what you'll find out from the experts: Well, if there's a
13 business purpose, it's not clear that you can't do what you're
14 saying. And there was a business purpose. Hanatoa was a
15 Tahitian cable company, and I believe what the evidence will
16 show is they were looking to maybe do business with Sandwich
17 Isles to land a cable here from Tahiti.

18 There are some other trips. And I think what you'll
19 find is that there was a business purpose for most of them,
20 most all of them. I don't necessarily have all the detail yet.
21 The government will present its case. But I think you'll see
22 there was a reason. Mr. Hee had a reason, the evidence will
23 show, to do what he did, and it was a reason in good faith.
24 Okay.

25 You're going to hear evidence of, basically, the

1 government picks out 121,000 of expenses. I'm just looking at
2 that one. Over a company during the same period of time
3 Sandwich Isles, Waimana, did six hundred million dollars,
4 approximately, of gross income. These grew into -- small
5 companies, before there was any of this, into large companies.

6 And as I mentioned before, you can't look at anybody
7 under a microscope without coming up with issues as to
8 disagreements. But what you'll see, you'll be convinced that
9 Mr. Hee was in good faith in what he did, and he was not
10 willful.

11 At the end of all the evidence, I'm going to
12 respectfully ask you to acquit him of all the charges, and
13 let's end this nine years.

14 Now, one more thing, and it's worth saying again, we
15 know you're coming here, you're away from work, your family,
16 and we appreciate that because that's the way this system
17 works. But one other thing that's really important and I want
18 to thank you for: We want to follow the rules, and your
19 commitment as jurors is very important. Holding the
20 prosecution, the government, to its burden of proof, as the
21 Judge talked about, which the Judge said is a very high burden
22 of proof, and it stays with them throughout the entire trial.
23 Mr. Hee does not have to prove anything, but we will prove a
24 lot of things.

25 Now, the other thing -- and I really appreciate your

1 attention at the end of the day -- is you've heard a lot of
2 things from me that you didn't hear in the government's
3 opening, and the government gets to go first. Okay. And
4 that's how it's going to happen during the trial. So I ask
5 you, I know you will, keep an open mind and wait to hear all
6 the evidence before making up your mind.

7 With that in mind, I want to thank you for your
8 attention, for your service as jurors, and I look forward to
9 presenting the evidence and being here with you for the next
10 few weeks. Thank you.

11 THE COURT: Okay. Ladies and gentlemen, I'm going to
12 excuse you for the day. Can you leave your notebooks on your
13 chairs. Nobody will look inside of them. And remember that
14 you cannot do any research about this matter, and also you
15 cannot hear or read or listen to any news reports. I'm sure
16 many of you have a routine where you read the morning paper,
17 you watch the evening news. Can you switch while you're jurors
18 in this trial to watching the cable news, national news
19 channels, instead of the local news. And for the newspaper, if
20 you have someone who can read the paper first and take out any
21 articles about a federal trial going on -- let me check with my
22 courtroom manager.

23 Are we the only trial today?

24 THE CLERK: Next week there's another one.

25 THE COURT: I think we are the only trial in this

1 building today; so any news story -- that may not be for the
2 rest of the trial. But right now any news article about a
3 federal ongoing trial in Hawai'i, they need to clip that out.
4 And then you can read the newspaper with holes in it. Read
5 around it. Okay. I thank you. I know it's a nuisance, but
6 this is part of the system. You need to focus not on what a
7 reporter may put into an article, but on the evidence in this
8 case.

9 Okay. So I thank you, and I'm going to excuse you
10 for the day.

11 Tomorrow morning we will begin at nine o'clock; so
12 you should be here a little before then. If you are in the
13 first floor juror lounge a little before 9:00, then
14 Miss Fujinaga will come down and get you and bring you up to
15 this courtroom so we can begin with the first witness at nine
16 o'clock tomorrow morning. Thank you very much.

17 So when we rise, we rise for you. So go ahead.

18 (Jury excused.)

19 THE COURT: Okay. So I will see counsel tomorrow.

20 Tomorrow, if you have some issue you need me to
21 address before the jurors come in, I'm arranging right now to
22 have an 8:30 telephone conference in another case; so you need
23 to let Miss Fujinaga know before 8:30. I can meet with you at
24 eight o'clock, for example, but I do not want to delay the
25 jurors; so I want to start on the dot at 9:00. So if something

1 arises, let her know early. We can talk about it earlier than
2 8:30.

3 Okay. Thank you. I'll see you tomorrow, nine
4 o'clock.

5 MR. TOSCHER: Thank you, Your Honor.

6 (Court adjourned at 4:09 P.M.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Debra Kekuna Chun, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript of the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9 DATED at Honolulu, Hawaii, August 13, 2015.

10

11

/s/ Debra Chun

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DEBRA KEKUNA CHUN

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RPR, CRR

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